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8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 11 JUANA MORENO, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA, et al.,

15 Defendants.

16 Case No. 1:23-cv-00449-SAB

17 ORDER VACATING JULY 19, 2023
18 HEARING

19 ORDER GRANTING MOTION TO
20 DISMISS

21 (ECF Nos. 12, 15)

22 **I.**

23 **INTRODUCTION**

24 Plaintiffs Juana Moreno, Veronica Moreno, George Moreno, Diego Moreno, Christina
25 Moreno, Nancy Moreno, Gabriel Moreno, and Jerado Moreno¹ (collectively, “Plaintiffs”)
26 initiated this wrongful death civil action against Defendants United States of America, United
27 Health Centers of the San Joaquin Valley (“UHC”), and Amarjot Rai, M.D. (“Rai”) (collectively,

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¹ The Court notes Plaintiff Jerado Moreno, the decedent’s grandson, is named appears in the text of the complaint as
29 a named plaintiff (see Compl. ¶¶ 1, 9, 29, ECF No. 1); however, the caption does not include Jerado’s name.
30 Construing all reasonable inferences in Plaintiffs’ favor, it appears Plaintiffs intended to include Jerado Moreno as a
31 party to this action.

1 “Defendants”) on March 24, 2023. (ECF No. 1.) Presently before this Court is the Government’s
2 motion to dismiss. (ECF No. 1.) The parties have consented to the jurisdiction of the United
3 States Magistrate Judge and this action has been assigned to Judge Stanley A. Boone for all
4 purposes. (ECF Nos. 7, 8, 10.)

5 The Court finds this matter suitable for decision without oral argument. See Local Rule
6 230(g). Thus, the hearing set for July 19, 2023 (see ECF No. 13), will be vacated and the parties
7 will not be required to appear at that time. Having considered the moving, opposition, and reply
8 papers, as well as the Court’s file, the Court shall grant the United States’ motion to dismiss.

9 **II.**

10 **BACKGROUND**

11 Plaintiffs are the surviving family members and successors in interest to the decedent
12 Alfred Moreno (the “Decedent”). (Compl. ¶¶ 1–9.) Defendant UHC is a federal public health
13 service that provides medical services in Fresno County. (Id. at ¶ 11.) Defendant Rai is a
14 physician and surgeon employed at UHC. (Id. at ¶ 12.) Plaintiffs are suing Defendants UHC and
15 Rai in their capacity as agents/employees of the United States. (Id. at ¶ 21.)

16 Plaintiffs allege the Decedent was experiencing great discomfort and pain in his ribs
17 “from or about before” January 2019, and employed UCH and Dr. Rai to diagnose and treat his
18 medical condition. (Id. at ¶ 20.) UCH and Dr. Rai provided medical services to the Decedent on
19 or before January 2019 through about November 2, 2019. (Id. at ¶ 21.) The Decedent died on
20 November 2, 2019, while under UCH and Dr. Rai’s care. (See id. at ¶¶ 21–22.) Plaintiffs claim
21 the Decedent died as a result of UCH and Dr. Rai’s negligent failure to exercise the proper degree
22 of knowledge and skill in examining, diagnosing, treating, and caring for him; specifically,
23 Plaintiffs allege Defendants failed to properly diagnose and treat the Decedent’s medical
24 condition. (See id. at ¶¶ 24–27.)

25 Plaintiffs initiated this action on March 24, 2023. (ECF No. 1.) The complaint asserts
26 causes of action pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671 *et*
27 *seq.* for: (1) wrongful death based on medical malpractice and (2) survival action based on
28 negligence. (Id. at 1, 5–6.) The parties consented to the jurisdiction of the United States

1 Magistrate Judge and the matter was assigned to Judge Stanley A. Boone on May 19, 2023. (ECF
2 Nos. 7, 8, 10.) An initial scheduling conference is currently set for October 17, 2023.² (ECF No.
3 13.) On May 31, 2023, the United States filed the instant motion to dismiss pursuant to Federal
4 Rule of Civil Procedure 12(b)(1). (ECF No. 12.) On June 7, 2023, the United States answered
5 the complaint. (ECF No. 14.) Plaintiffs filed a statement of non-opposition to the motion on June
6 14, 2023 (ECF No. 15), and the matter is deemed submitted.

7 **III.**

8 **LEGAL STANDARD**

9 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by
10 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific
11 claims alleged in the action. When a party brings a facial attack to subject matter jurisdiction,
12 that party contends that the allegations of jurisdiction contained in the complaint are insufficient
13 on their face to demonstrate the existence of jurisdiction. Safe Air for Everyone v. Meyer, 373
14 F.3d 1035, 1039 (9th Cir. 2004). In a Rule 12(b)(1) motion of this type, the factual allegations of
15 the complaint are presumed to be true, and the motion is granted only if the plaintiff fails to allege
16 an element necessary for subject matter jurisdiction. Savage v. Glendale Union High Sch. Dist.
17 No. 205, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); Miranda v. Reno, 238 F.3d 1156, 1157 n.1 (9th
18 Cir. 2001).

19 **IV.**

20 **DISCUSSION**

21 When a federal employee is named in a tort suit, the Attorney General or his designee may
22 certify that the employee was acting within the scope of her office or employment at the time of
23 the incident out of which the claim arose. Wuterich v. Murtha, 562 F.3d 375, 380 (D.C. Cir.
24 2009) (citing 28 U.S.C. § 2679(d)(1)). When such a certification is made, the individual
25 employee is dismissed from the case and the United States is substituted as the defendant in place
26 of the employee. Id. The suit is then governed by the FTCA and is subject to all of the FTCA's

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28 ² In light of the Court's ruling on the instant motion and the fact that the United States has already filed an answer to the complaint, the parties are advised that they may seek to advance the date of the scheduling conference by way of stipulation.

1 exceptions for actions in which the Government has not waived sovereign immunity. Id.
2 “Certification by the Attorney General is *prima facie* evidence that a federal employee was acting
3 in the scope of her employment at the time of the incident and is conclusive unless challenged.
4 The party seeking review bears the burden of presenting evidence and disproving the Attorney
5 General’s certification by a preponderance of the evidence.” Billings v. United States, 57 F.3d
6 797, 800 (9th Cir. 1995) (internal citations omitted).

7 Here, Plaintiffs have affirmatively alleged that Defendants UCH and Dr. Rai were acting
8 at all relevant times as agents/employees of the United States (Compl. at ¶¶ 10–12, 15, 19, 21),
9 and their causes of action are asserted pursuant to the FTCA (id. at ¶ 15). Further, the United
10 States has certified that Defendants UCH and Rai were acting within the scope of employment for
11 the Public Health Service, see 42 U.S.C. 233(g), at all times relevant to the complaint. (See ECF
12 No. 11 (Chi-Soo Kim Cert.).) Thus, the United States moves to dismiss Defendants UCH and Dr.
13 Rai for lack of subject matter jurisdiction under Rule 12(b)(1), and argues this matter should
14 proceed against the United States as the sole defendant. (ECF No. 12-1 at 3.) Plaintiffs have
15 filed a statement of non-opposition to the dismissal of UCH and Dr. Rai on this basis. (ECF No.
16 15.)

17 On this record, the Court finds this action is governed by the FTCA and the United States
18 is the proper defendant. Wuterich v. Murtha, 562 F.3d at 380; Billings, 57 F.3d at 800. The
19 United States is therefore properly substituted for Defendants UCH and Dr. Rai and those
20 Defendants shall be dismissed.

21 **V.**

22 **CONCLUSION AND ORDER**

23 For the foregoing reasons, IT IS HEREBY ORDERED that:

24 1. The July 19, 2023 hearing on the motion to dismiss is VACATED;
25 2. Defendant’s motion to dismiss (ECF No. 12) is GRANTED;
26 3. Defendants United Health Centers of the San Joaquin Valley and Amarjot Rai,
27 M.D. are DISMISSED for lack of subject matter jurisdiction; and

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4. This action shall proceed on Plaintiffs' claims as asserted against Defendant
United States of America.

IT IS SO ORDERED.

Dated: July 10, 2023



UNITED STATES MAGISTRATE JUDGE